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IN THE

Supreme Court of the United States

No. 796. / 8 OCTOBER TERM, 1931.

NORFOLK AND WESTERN RAILWAY COMPANY,
Appellant,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,
Appellees.

Jurisdictional Statement.

THEODORE W. REATH,
S. KING FUNKHOUSER,
D. LYNCH YOUNGER,
HARVEY B. APPERSON,
Counsel for Appellant.

March 28, 1932.

IN THE

Supreme Court of the United States

No. 796. October Term, 1931.

NORFOLK AND WESTERN RAILWAY COMPANY,

Appellant,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Appellees.

JURISDICTIONAL STATEMENT.

Now comes Appellant, by Counsel, and submits the following Jurisdictional Statement pursuant to Rule 12 of this Court.

This is an appeal of right from the District Court of the United States for the Western District of Virginia in which Appellant seeks a review of the final judgment or decree of a special three-judge Court dismissing Appellant's petition in a suit by it to set aside and annul a certain order of the Interstate Commerce Commission to enjoin and restrain said Commission from enforcing the same.

(a) Jurisdiction is conferred on this Court by the Act of October 22d, 1913, Chapter 32; 38 Stat. 220; Title 28, Section 47a U. S. C. A.; Act of February 13, 1925, Chapter 229, 43 Stat. 938; Title 28, Section 345 U. S. C. A., known as the District Court Jurisdiction Act, giving a right of appeal direct to the Supreme Court in such cases:

(b) The decree to be reviewed was entered by the United States District Court for the Western District of Virginia on October 15th, 1931, Transcript Page 649, said Court being composed of the Honorable John J. Parker, United States Circuit Judge, Fourth Circuit; the Honorable Henry C. McDowell, United States District Judge Western District of Virginia, and the Honorable Luther B. Way, United States District Judge Eastern District of Virginia.

The application for the appeal was presented on November 14th, 1931, Transcript Page 661, and the appeal was granted on November 18th, 1931, Transcript Page 669.

An order enlarging the time to January 18th, 1932, within which to docket the appeal and file the record therein in this Court was entered by said District Court on November 18th, 1931, Transcript Page 670. A further order of enlargement of the time to and including March 18th, 1932, within which to docket the appeal and file the record therein in this Court was entered by said District

Court on December 21st, 1931, Transcript Page 673.

(c) This proceeding was instituted in the United States District Court for the Western District of Virginia, at Roanoke, Virginia, against the Interstate Commerce Commission and the United States of America by the Norfolk and Western Railway Company, a common carrier having its residence and principal place of business at Roanoke in said District of Virginia, to set aside and annul a certain order of the Interstate Commerce Commission and to enjoin and restrain said Commission from enforcing the same. The order of said Commission sought to be set aside, annulled, enjoined and restrained was entered on January 5th, 1931, Transcript Page 37, and classified certain collieries owned and operated by said carrier as non-transportation property instead of transportation property, as the Carrier contended they should be classified. The said order also required that the said collieries be included in Account Number 705 (Non-carrier or Non-transportation property) instead of Account Number 701 (Carrier or Transportation Property) as the Carrier contended, Transcript Page 27.

(d) The jurisdiction is believed to be sustained by the case of KANSAS CITY SOUTHERN RAILROAD COMPANY v. UNITED STATES, 231 U. S. 423.

WHEREFORE, it is prayed that jurisdiction on appeal be noted.

Respectfully,

THEODORE W. REATH,

S. KING FUNKHOUSER,

D. LYNCH YOUNGER,

HARVEY B. APPERSON,
Counsel for Appellant.

March 28, 1932.